STATE OF MICHIGAN

COURT OF APPEALS

JORGE CORTEZ, as next friend of YAHAIRA CORTEZ, Minor,

Plaintiff-Appellant,

v

OCB RESTAURANT COMPANY, d/b/a OLD COUNTRY BUFFET,

Defendant-Appellee.

UNPUBLISHED
March 11, 2003

No. 236209
Kent Circuit Court
LC No. 99-007843-NI

Before: Whitbeck, C.J., and Cavanagh and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in defendant's favor in this premises liability action. We affirm.

Plaintiff's claim arises as a consequence of defendant allegedly providing a plastic booster seat to plaintiff's parents for plaintiff's use, from which she fell, while she was at defendant's restaurant. Plaintiff was a one-year-old child at the time of the incident. Plaintiff's father, as next friend, brought this action alleging that defendant owed a duty to provide proper seating to plaintiff, including a highchair, and breached that duty by providing, instead, the plastic booster seat for plaintiff's use. Defendant filed a motion for summary disposition, pursuant to MCR 2.116(C)(10), arguing that plaintiff's parents admitted that plaintiff had never sat in a booster seat before the incident and that she was unsupervised at the time she fell. Accordingly, defendant argued, it did not owe a duty to plaintiff to protect her from the open and obvious risk of her being placed in a booster seat by her parents who then left her unattended. The trial court agreed, holding that defendant did not owe a duty to plaintiff in light of the open and obvious nature of the risk presented and that her parents "should have taken care of their child and they didn't." Plaintiff's motion for reconsideration was denied and this appeal followed.

Plaintiff argues that the trial court erred in dismissing the action because, by providing a booster seat to plaintiff's parents for her use instead of the requested highchair, defendant created a dangerous condition on the premises. We disagree. This Court reviews the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim; therefore, affidavits, admissions, and documentary evidence are considered in the light most

favorable to the opposing party to determine whether the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

To establish a prima facie case of negligence, a plaintiff must prove that the defendant owed the plaintiff a duty that it breached, which was a cause in fact and legal cause of the plaintiff's damages. See *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994); *Spikes v Banks*, 231 Mich App 341, 355; 586 NW2d 106 (1998). Here, plaintiff claims that defendant, as a business invitor, owed her a duty to exercise reasonable care to protect her from an unreasonable risk of harm caused by a dangerous condition on the premises. See *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). Plaintiff argues that defendant created a dangerous condition by providing a plastic booster seat, instead of a highchair, to her parents for her use while dining on the premises and, thereby, breached its duty of care. We disagree.

Defendant's "duty to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land" is not absolute. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499-500; 418 NW2d 381 (1988). That duty does not extend to open and obvious conditions or to conditions from which an unreasonable risk cannot be anticipated. *Id*. at 500. Although, here, the trial court held that the allegedly dangerous condition was open and obvious, relieving defendant of its duty of care, we conclude that merely providing a booster seat to plaintiff's parents as a seating *option* did not cause plaintiff to confront "an unreasonable risk of harm caused by a dangerous condition." Plaintiff does not claim that defendant provided a defective booster seat for her use; rather, it was the use of the booster seat under the unique circumstances presented by plaintiff's particular physical abilities that allegedly posed the dangerous condition. Consequently, the duty espoused by plaintiff is essentially a duty to protect plaintiff from her parent's choices regarding her safety and welfare—this duty we will not impose. Defendant's failure to intervene regarding plaintiff's parents choice of seating arrangements on her behalf does not constitute actionable negligence against defendant. Therefore, albeit for the wrong reason, the trial court properly granted defendant's motion for summary disposition. See *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001) (this Court will affirm a trial court when it reaches the right result for the wrong reason). In light of our resolution of this dispositive issue, we decline to review plaintiff's other issues on appeal.

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra